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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Comments of the Human Rights Committee

Sri Lanka

1. The Committee considered the third periodic report (CCPR/C/70/Add.6 and HRI/Core/1/Add.52) at its 1438th to 1440th meetings, held on 24 and 25 July 1995, and adopted [1] the following the comments:

A. Introduction

2. The Committee appreciates the opportunity to resume its dialogue with the State party. It regrets, however, that the State party report was not satisfactory in that it failed to provide detailed information on the actual implementation in practice of the provisions of the Covenant. Moreover, the Committee while welcoming the updated additional information prepared by the Government and presented to the Committee, notes that the lateness of its submission did not allow for wide distribution, including its availability in all the working languages of the Committee. Notwithstanding this point, the Committee wishes to express its gratitude to the delegation for the supplementary information it provided orally in answer to both the written and oral questions posed by members of the Committee.

B. Factors and difficulties affecting the implementation of the Covenant

3. The Committee recognizes and appreciates the firm commitment of the Government to a durable and peaceful solution to the conflict in the North and East of the country. In view of the considerable efforts undertaken by the Government to initiate and bring peace to the

[1] At its 1443rd meeting (Fifty-fourth session), held on 27 July 1995

Island, the Committee deeply regrets the breakdown of the negotiations and the resumption of armed conflict. The return of hostilities has given rise to serious violations of human rights on both sides, thus adversely affecting the application of the Covenant.

C. Positive aspects

4. The Committee welcomes the initiatives being undertaken by the Government to further the protection and promotion of human rights. In this respect the Committee notes that a package of constitutional reforms is in the process of preparation. The Committee notes that draft proposals are currently under consideration for establishing a new procedure for direct petitioning to the Supreme Court in the case of the infringement of fundamental rights and for broadening the scope of local standings in such cases so as to permit a non-governmental organization to file a petition before the Supreme Court.

5. The Committee further welcomes the enactment of Parliamentary Commissioner for Administration (Amendment) Act No. 26 of 1994 which provides for more direct public access to the Ombudsman. In addition, the Committee notes that the final report by the Committee appointed to inquire into matters relating to persons detained under the Prevention of Terrorism Act and the Emergency Regulations has recommended the immediate revocation of detention orders relating to 140 persons whom the Attorney General has decided not to prosecute. The appointment of a Commission to inquire into Election Related Violence is also noted.

6. The Committee expresses its satisfaction at the Government's stated policy of not implementing death sentences and that corporal punishment as a penalty has been suspended for the last 10 years.

7. The Committee notes with satisfaction the important role being played by non-governmental organizations in Sri Lanka in contributing to the reform of laws protecting human rights, for example with respect to the recent amendment of regulations under Section 5 of the Public Security Ordinance by which members of the armed forces and the police have been directed to issue "arrest receipts" even in the case where such information has not been requested by the interested parties, such as family members.

8. The Committee welcomes the recent adoption of an Act establishing the National Human Rights Commission of Sri Lanka. It also welcomes the establishment of the Human Rights Advisory Group.

9. The Committee expresses its appreciation at the efforts undertaken to include human rights education within the curricula of secondary schools and higher educational establishments, and that human rights training programmes are been organised for the security forces.

D. Principal subjects of concern

10. The Committee considers that the domestic legal system of Sri Lanka contains neither all the rights set forth in the Covenant nor all the necessary safeguards to prevent their restrictions beyond the limits established by the Covenant. It notes also that the Government does not appear to be considering the incorporation of all Covenant rights into domestic law or the ratification of the Optional Protocol; individuals are thus unable to invoke all the rights conferred under the Covenant before national courts or before the Human Rights Committee.

11. The Committee is of the opinion that the time limit of two years proposed in the draft new Constitution for challenging the validity of enacted legislation with the Constitution is a matter of serious concern. Equally, the Committee expresses its concern with respect to the provisions of article 16 (1) of the Constitution which permits all existing laws to remain valid and operative notwithstanding any inconsistency with the Constitution's provisions relating to fundamental rights.

12. With regard to the recent establishment of various mechanisms for protecting and promoting human rights, the Committee appreciates the undertaking of these initiatives but remains concerned as to whether sufficient attention is being given to the coordination of the work of the respective Committees, Commissions and the Human Rights Task Force so as to avoid any duplication of efforts and thus maximise the effectiveness of their work.

13. The Committee is concerned that the derogation of rights under the various emergency laws and regulations may not be in full compliance with the requirement of the provisions of article 4, paragraph 2, of the Covenant. It is further concerned that courts do not have the power to examine the legality of the declaration of emergency and of the different measures taken during the state of emergency. The Committee emphasizes that the obligations assumed by Sri Lanka as a State party to various international instruments must be respected even in times of States of emergency.

14. With reference to article 6 of the Covenant, the Committee is concerned that under Sri Lankan law, the death penalty may be imposed for crimes such as abetting suicide, drug-related offenses, and certain offenses against property. Some of these offences do not appear to be the most serious offences under article 6 of the Covenant.

15. The Committee is seriously concerned about the information received of cases of losses of life of civilians, disappearances, torture, and summary executions and arbitrary detention caused by both parties in conflict. The Committee notes with particular concern that an effective system for the prevention and punishment of such violations does not appear to exist. In addition, concern is expressed that violations and abuses allegedly committed by police officers have not been investigated by an independent body, and that frequently the perpetrators of such violations have not been punished. The Committee notes that this may contribute to an atmosphere of impunity among the perpetrators of human rights violations and constitute an impediment to the efforts being undertaken to promote respect for human rights.

16. With respect to the remit of the three Presidential Commissions of Inquiry into Involuntary Removals and Disappearances, the Committee is concerned that the Commissions

are not mandated to inquiring into such human rights violations allegedly commitied between 1984 and 1988 nor to summary executions.

17. The Committee is concerned that the undetermined detention which may be ordered by the Secretary of the Ministry of Defence violates the Covenant, particularly when such detention can be challenged only one year after detention.In view of this, the Committee remains concerned about the effectiveness of the habeas corpus remedy in respect to those arrested under the Prevention of Terrorism Act.

18. The Committee is concerned that the rights under article 10 of the Covenant of persons deprived of their liberty in prisons and other places of detention are not fully respected. It regrets that conditions in places of detention other than prisons are not regulated by law and that prisons and other places of detention are not regularly visited by magistrates of or other independent bodies.

19. With respect to the independence of the judiciary, the Committee expresses its concern about the procedure set forth under article 107 of the Constitution read with standing orders made by Parliament.

20. The low age of criminal responsibility and the stipulation within the Penal Code by which a child above 8 years of age and under 12 years of age can be held to be criminally responsible on the determination by the judge of the child's maturity of understanding as to the nature and consequence of his/her conduct are matters of main concern to the Committee.

21. The provisions of the Special Presidential Commissions of Inquiry Act which permit the acceptance of evidence otherwise inadmissible in a court of law and which stipulate that any decision adopted by a Commission established under the Act is final and conclusive and may not be called into question by any court and tribunal are matters of serious concern to the Committee in view of the fact that the findings of these Commissions can lead to a penalty of civic disability being imposed by Parliament on those subject to an investigation.

22. The Committee is also concerned that Article 15 (2) of the Constitution allows the right to freedom of expression to be restricted in relation to parliamentary privilege, particularly in view of the fact that the Parliament (Power and Privileges) Act as amended in 1978 gives Parliament the power to impose penalties for breaches of this Act. The Committee is also concerned with the proposed amendments in the Constitution which seek to restrict the right to freedom of expression, "in the interest of the authority of Parliament", which would be violative of article 19 of the Covenant. It is equally concerned that Government ownership and control over much of the electronic media might undermine the right of everyone to seek, receive or impart information and ideas of all kinds.

23. The Committee notes that the workers employed in the Free Trade Zones, 80% of whom are women, are unable, in practice, to enjoy fully the rights set forth in articles 21 and 22 of the Covenant.

24. While the Committee welcomes the proposed changes to legislation for offenses committed against children, such as incest and the sexual exploitation of children, it is

concerned about the situation of the economic and sexual exploitation of children both with respect to the use of children in domestic service and the prostitution of boys.

25. The Committee notes that reforms are in place to raise the marriageable age for girls to 18. However, the current legislation permits the marriage of girls from the age of 12 and contains discriminatory provisions with regard to property between men and women, thus preventing women from fully enjoying the rights protected under articles 3, 23, paragraph 3 and 26 of the Covenant.

E. Suggestions and recommendations

26. The Committee strongly recommends that the State party take urgent steps to ensure that its domestic laws are in full compliance with the Covenant. In this regard, it further recommends that within the context of the present efforts to reform the Constitution due consideration be given to the provisions of the Covenant.

27. The Committee recommends that the State party consider acceding to the Optional Protocol.

28. The Committee notes the efforts being undertaken by the Government to establish various mechanisms to promote and protect human rights, including with respect to the National Human Rights Commission. In this regard, the Committee would like to strongly recommend that the multiplication of bodies with parallel competencies should be avoided and that the coordination of such mechanisms should be ensured. It also urges the State party to take into account that investigation and prosecution of criminal offences should be carried out by an independent body and that punishment of criminal offenses should be carried out by the judiciary.

29. The Committee recommends that the State party review the provision of article 16 of the Constitution which permits all existing laws to remain valid and operative notwithstanding any inconsistency with constitutional stipulations relating to fundamental rights. It also recommends that the two-year time limit for challenging constitutionality of enacted legislations should be deleted.

30. The Committee recommends that the provisions of the Covenant should be fully respected in the areas where a State of Emergency has been proclaimed. The Committee also urges the State party to vigorously investigate into all violations of human rights - both past and present, through an independent agency, to punish those guilty of such acts and to compensate the victims.

31. The Committee recommends that the State party ensure that the death penalty may only be imposed for the most serious of crimes as required by Article 6 of the Covenant. Moreover, in view of the fact that the death penalty has not been carried out since 1977, the Committee wishes to further recommend that the State party consider taking measures for the abolition of the death penalty and the ratification of or accession to the Second Optional Protocol.

32. The Committee, noting that the definition of torture given in the Convention Against Torture Act passed by Parliament on 25 November 1994 is somewhat restrictive, recommends that the Act be amended to bring it in conformity with article 7 of the Covenant, taking into account the Committee's General Comment No.20(44). It further recommends that in view of the statement by the Government that corporal punishment has been suspended the provisions of the domestic legislation allowing this form of punishment be revoked.

33. With regard to articles 9 and 10 of the Covenant, the Committee recommends that as a matter of priority all legal provisions or executive orders be reviewed to ensure their compatibility with the provisions of the Covenant and their effective implementation in practice.

34. The Committee recommends that the State party review the existing procedure relating to the removal of Supreme court judges and judges of the Courts of Appeal with a view to its amendment as a means to further secure the independence of the judiciary.

35. The Committee recommends the amendment of the Special Presidential Commissions of Inquiry Act in order that it comply with the provisions of Articles 14 and 25 of the Covenant.

36. The Committee recommends that the present provisions by which freedom of the press can be restricted by reason of parliamentary privilege should be removed. The State party should also take the necessary steps to prevent control and manipulation of electronic media by the Government.

37. With respect to the implementation of article 22, the Committee recommends that the State party ensure that workers within the Free Trade Zones effectively exercise their right to organize.

38. The Committee recommends that measures be taken to ensure the protection of the child and in this regard the particular attention of the State party is drawn to the Personal Status Act which permits the marriage of a girl at the age of 12 and its incompatibility with the provisions of the Covenant.

39. The Committee urges the State party to develop a comprehensive programme to deal with the issues of child labour, particularly of children in domestic service and the sexual exploitation of children of both sexes.

40. The Committee strongly recommends that greater efforts be undertaken to ensure that all ethnic groups are provided with the opportunity to participate fully in the conduct of public affairs and are ensured equitable access to public service.

41. The Committee recommends that further measures be taken to develop greater awareness of the Covenant; in particular, law enforcement officials and members of the legal profession should be made fully cognizant of the provisions of the Covenant.